TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 183, 220.

THE AMERICAN EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

FRED A. MAYNARD, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, EX REL. GEORGE F. MOORE ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

FILED FEBRUARY 21, 1899.

(17,308.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 723.

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vs.

FRED A. MAYNARD, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, EX REL. GEORGE F. MOORE ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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1 (*Petition for Writ of Certiorari.*)

STATE OF MICHIGAN:

To the supreme court:

The petition of the American Express Company, which is a joint stock association, with its principal offices located in the city of New York (and is not organized as a corporation), respectfully shows that on the third day of August, 1898, an application was made to the circuit court for the county of Wayne jointly by several business houses of Detroit, in the name of the attorney general, against your petitioner, praying for the issuing of the writ of mandamus, to be directed to your petitioner, a copy of which application is hereto attached, marked "A."

That upon the filing of such application an order to show cause, directed and served upon your petitioner, was made by said court, of which order a copy is hereto attached, marked "B."

That on August 13, 1898, your petitioner filed its answer to said order to show cause, copy of which is hereto attached, marked "C."

That afterwards and on September 7th said matter came on for hearing before the Hon. R. E. Frazer, circuit court judge, and, no issue being demanded by the relators, the same was heard on petition and answer.

And thereafter and on September 21, 1898, the said circuit judge made an order in said matter, a copy of which is hereto attached, marked "D."

Your petitioner further shows and charges:

1. That the said circuit court had no jurisdiction to hear and determine said matter.

2. That said circuit court had no legal power to make the final order as shown by Exhibit D.

2 3. That under the facts set forth in the answer of your petitioner and legally admitted to be true by relators the court should have dismissed said applicatian with costs.

4. That your petitioner feeling itself aggrieved by the entry of said order, and its rights under the license granted it by this State being greatly injured and unlawfully infringed—

Your petitioner therefore prays that this court's writ of certiorari may issue to the said circuit court of the county of Wayne, commanding it to certify the records and proceedings in the above matter to this court, and that this court will reverse said order and will grant to your petitioner such other and further relief in the premises as law and justice shall require.

AMERICAN EXPRESS CO.,
By CHAS. F. REED, *Gen'l Ag't.*

WISNER & HARVEY,
Attorneys for Petitioner.
H. C. WISNER, *Of Counsel.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

Chas. F. Reed, being duly sworn, says that he is the agent of the above-named petitioner and is authorized by it to make and does make this affidavit in its behalf; that he has read the foregoing petition and knows the contents thereof and is familiar with the facts therein, and the same are true as stated.

CHAS. F. REED.

Subscribed and sworn to this 23rd day of September, 1898.

LEWIS C. McBRIDE,
Notary Public, Wayne County, Michigan.

3 A.

The Circuit Court for the County of Wayne.

To the circuit court for the county of Wayne:

The petition of Fred A. Maynard, attorney general of the State of Michigan, at the relation of George F. Moore, Ransom Gillis, Charles Buncher, Frank S. Munger, Abram P. Sherrill, and James S. Meredith, as survivors of themselves and James L. Edson, deceased, composing the firm of Edson, Moore & Co.; Henry A. Krolik and Herman Krolik, composing the firm of A. Krolik & Co.; William H. Strong, James L. Lee, Hal W. Glover, and George R. Treble, composing the firm of Strong, Lee & Co.; James W. Fales and William J. Fales, composing the firm of J. W. Fales & Co.; James K. Burnham, Albert H. Munger, Frederick C. Stoepel, Joseph J. Crowley, and James Wilson, composing the firm of Burnham, Stoepel & Co., and the American Harrow Co., a body corporate, respectfully represents:

1. That the American Express Company, the respondent herein, is a joint stock association, organized and existing under the laws of the State of New York and having its principal business office located in the city of New York, in said State.

2. That said company is a common carrier, transacting the express business, so called, and is engaged in the business of receiving, carrying, forwarding, and delivering goods, wares, and merchandise, by express, for hire, on behalf of all persons who may see fit to require its services from point to point throughout the various States and Territories of the United States, and particularly from point to point in the State of Michigan.

3. That on the 29th day of January, A. D. 1897, said com-
4 pany had four hundred and eighty-nine (489) agencies or places of business in the State of Michigan alone, at which agencies or places of business said company received goods, wares, and merchandise in boxes, bales, packages, bundles, or otherwise for transmission and transporting for hire to various points in the State of Michigan and throughout the United State, and was then and still is a common carrier, holding itself out to the public as

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authorized to receive, carry, and deliver such boxes, bales, packages, or bundles, &c.

4. That the business of the said company was and is large and lucrative, and that by the annual report of said company filed in the office of the State treasurer of the State of Michigan on the 29th day of January, 1897, the said company then represented that its business was represented by one hundred and eighty thousand (180,000) shares, and that the working fund of the association was fixed at five million three hundred thousand dollars ($5,300,000), and that the amount of the gross receipts on their current business in the State of Michigan for the year ending December 31, 1896, was the sum of one hundred thirty thousand four hundred fifty-nine and $\frac{25}{100}$ dollars ($130,459.25), and that said statement represents substantially, as petitioner is informed and believes, the situation and condition of said company at the present time.

5. That chapter 103 of Howell's Statutes of the State of Michigan provides that it shall not be lawful for any person or persons to act within this State as agent or officer in transacting the express business or the forwarding of packages or parcels by express for any company, association, or individual without first procuring a certificate of authority or license from the State treasurer of this State, and before obtaining such certificate such company, association, individual, agent, or agents is required to furnish to the State
5 treasurer of the State of Michigan annually in the month of January in each year with a statement, under oath, of the president, treasurer, secretary, or general agent of such company, association, or individual, showing:

First. The name and locality of the company or association.

Second. The amount of its capital stock, and how much is paid upon such stock.

Third. The number of agencies or places of business of said company in this State.

Fourth. The amount of gross receipts on their current business in this State for the year ending December 31st, next preceding such report.

And the said express company, association, firm, corporation, or individual complying with the requirements of said act and receiving a certificate or license from the State treasurer of the State was and is by said act permitted to do business freely in any part of the State.

6. And your petitioner represents upon information and belief that the said American Express Company, respondent, has substantially complied with the terms and provisions of said act, and thereupon received a permit and license to do business in the State of Michigan, and in pursuance thereof is authorized to do business in said State, and to receive, accept, and transmit packages from point to point throughout the United States, and your petitioner represents that it is the duty of the said respondent to so receive, accept, and transmit said packages when duly offered or tendered to it for that purpose and the charges therefor paid or tendered.

THROUGH POOR COPY

7. That the business of said company is of a public or quasi public character, and a public function used and exercised by said company for the people at large throughout the State of
6 Michigan, as well as other States of the United States, and in which the public has a substantial interest, and the abuse or misuse of which is of a substantial nature.

8. That the persons at whose relation this proceeding is instituted by the attorney general of the State constitute a portion of the people of the State of Michigan and the public at large, and that the refusal of the respondent to receive, accept, and transmit goods, wares, and merchandise, as hereinafter more particularly stated and represented, constitutes but a few out of many cases of like character, and are presented for the purpose of representing the uniform course and practice of the respondent company.

9. Your petitioner further represents that on June 13, 1898, the Congress of the United States passed an act entitled "An act to provide ways and means to meet war expenditures and for other purposes," and that said act, among other things, provides:

"Express and freight: It shall be the duty of every railroad or steamboat company, carrier, express company or corporation, or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or persons from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk, or in boxes, bales, packages, bundles, or not so enclosed or included; and that there shall be duly attached and cancelled, as in this act provided, to each of said bills of lading, manifest or other memorandum, and to each duplicate thereof, a stamp of the value of one cent: Provided, that but one bill of lading shall be required on bundles or packages of newspapers when enclosed in one general bundle at the time of shipment. Any failure to issue such bill of lading, manifest or other memorandum, as herein provided, shall subject such railroad
7 or steamboat company, carrier, express company or corporation, or person, to a penalty of fifty dollars for each offense, and no such bill of lading, manifest or other memorandum shall be used in evidence, unless it shall be duly stamped as aforesaid."

10. That by reason of a desire of the respondent to avoid the payment of the stamp tax, so called, and to impose such obligation on the shipper, the respondent herein refuses to accept any goods for transportation unless such shipper attaches the stamp to the said bill of lading, manifest, or other evidence of receipt and forwarding for each shipment or furnishes the money and means for that purpose to the said company, and that the said company thereby not only avoids its duty under said act of Congress to pay and bear its proportion of the revenues to meet war expenditures, as provided by said act, but violates its duty as a common carrier to receive, accept, transport, and deliver such goods, wares, and merchandise so offered and tendered to it for that purpose, and in support thereof your petitioner represents:

(a.) That on the first day of July, A. D. 1898, the firm of Edson,

Moore & Co., as hereinbefore mentioned, presented, tendered, and offered a box, bale, package, bundle, or parcel to said express company for shipment and transportation, and that said company refused to receive, accept, ship, and transport the same or to issue to the said shipper a receipt therefor unless a stamp of the value of one cent was paid or provided by said Edson, Moore & Co.

(*b.*) That on the first day of July, A. D. 1898, the firm of A. Krolik & Co., as hereinbefore mentioned, presented, tendered, and offered a box, bale, package, bundle, or parcel to said express company for shipment and transportation, and that said company refused to receive, accept, ship, and transport the same or to issue to the said

8 shipper a receipt therefor unless a stamp of the value of one cent was paid or provided by said A. Krolik & Co.

(*c.*) That on the first day of July, A. D. 1898, the firm of Strong, Lee & Co., as hereinbefore mentioned, presented, tendered, and offered a box, bale, package, bundle, or parcel to said express company for shipment and transportation, and that said company refused to receive, accept, ship, and transport the same or to issue to the said shipper a receipt therefor unless a stamp of the value of one cent was paid or provided by said Strong, Lee & Co.

(*d.*) That on the second day of July, A. D. 1898, the firm of J. W. Fales & Co., as hereinbefore mentioned, presented, tendered, and offered a box, bale, package, bundle, or parcel to said express company for shipment and transportation, and that said company refused to receive, accept, ship, and transport the same or to issue to the said shipper a receipt therefor unless a stamp of the value of one cent was paid or provided by said J. W. Fales & Co.

(*e.*) That on the seventh day of July, A. D. 1897, the firm of Burnham, Stoepel & Co., as hereinbefore mentioned, presented, tendered, and offered a box, bale, package, bundle, or parcel to said express company for shipment and transportation, and that said company refused to receive, accept, ship, and transport the same or to issue to the said shipper a receipt therefor unless a stamp of the value of one cent was paid or provided by said Burnham, Stoepel & Co.

(*f.*) That on the 2nd day of August, A. D. 1898, the American Harrow Co., a body corporate, as hereinbefore mentioned, presented, tendered, and offered a box, bale, package, bundle, or parcel to said express company for shipment and transportation, and that said company refused to receipt, accept, ship, and transport the same or to issue to the said shipper a receipt therefor unless a stamp of the value of one cent was paid or provided by said American Harrow Co.

9 11. As before stated, your petitioner represents that the above and foregoing constitute but a few of many instances of like character, and that it is the uniform course and practice of the said respondent to refuse to receive, accept, transport, carry, and deliver such goods, wares, and merchandise in boxes, bales, packages, bundles, or otherwise unless the said stamp tax is paid or provided by said shipper.

12. Your petitioner represents that the said American Express Company, respondent herein, has substantially refused to discharge

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its duty as a common carrier and has, to a material degree, suspended the exercise of its functions and franchises by refusing to take goods, wares, and merchandise in boxes, packages, bales, parcels, &c., which have been offered and tendered to it at its places of business and agencies in the city of Detroit for transportation at the usual rates and upon the usual terms, and has refused to accept and transport a great part of the goods, wares, and merchandise duly offered and tendered to it except upon the consent of the shipper to pay the said stamp tax, so called, whereby great loss and damage has accrued to the people of the State, and the trade and commerce of the people of said State is greatly injured by the refusal and neglect of said respondent company to perform its duties of carrier unless the stamp tax, so called, is paid by the shippers and consignors so tendering such goods to said company.

Your petitioner therefore prays that a peremptory mandamus may issue to the said The American Express Company and Charles F. Reed, the local agent thereof, respondents, and to its officers, agents, and servants, commanding it and them to receive, accept, transmit, and deliver any and all goods, wares, and merchandise duly offered or tendered to it in boxes, bales, packages, or bundles or not so enclosed or included for transportation when the fees and charges for such goods are paid, offered, or tendered to said company, and to issue to the shippers and consignors throughout the State of Michigan or their agent or agents or persons from whom any such goods are received for transportation a bill of lading, manifest, or evidence of receipt or forwarding for each shipment received for carriage and transportation, with the stamp duly attached thereto and cancelled by it, as provided by the act of Congress hereinbefore mentioned, and without demanding or requiring of such consignors or shippers the said stamp or the value thereof.

FRED A. MAYNARD,
Attorney General of the State of Michigan.

WARNER, CODD & WARNER,
Attorneys for Petitioner.

STATE OF MICHIGAN, }
County of Wayne, } ss:

Fred A. Maynard, attorney general of the State of Michigan, being duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true, as he verily believes.

FRED A. MAYNARD.

Subscribed and sworn to before me this 2nd day of August, A. D. 1898.

C. M. MATTHEWS,
Notary Public, Wayne County, Michigan.

11 STATE OF MICHIGAN, } ss:
County of Wayne, }

William H. Marshall, being duly sworn, deposes and says that on the first day of July, A. D. 1898, he presented, offered, and tendered to the American Express Company for shipment by it as a common carrier, in behalf of Edson, Moore & Co., a certain box or package addressed to Wm. Barie & Son, at Saginaw, E. S., Mich., and that the said express company refused to receive, accept, ship, and transport the said box or package unless a revenue stamp of the value of one cent was paid or provided by said Edson, Moore & Co. therefor.

WM. H. MARSHALL.

Subscribed and sworn to before me this 1st day of August, A. D. 1898.

SOL. J. GRONEMAUR,
Notary Public, Wayne County, Michigan.

12 STATE OF MICHIGAN, } ss:
County of Wayne, }

Geo. R. Treble, being duly sworn, deposes and says that on the first day of July, A. D. 1898, he presented, offered, and tendered to the American Express Company for shipment by it as a common carrier, in behalf of Strong, Lee & Co., a certain box or package addressed to Stanley D. Gray, at Coloma, Mich., and that the said express company refused to receive, accept, ship, and transport the said box or package unless a revenue stamp of the value of one cent was paid or provided by said Strong, Lee & Co. therefor.

GEORGE R. TREBLE.

Subscribed and sworn to before me this 1st day of August, A. D. 1898.

C. J. MORROW,
Notary Public, Wayne County, Michigan.

13 STATE OF MICHIGAN, } ss:
County of Wayne, }

Herman Krolik, being duly sworn, deposes and says that on the first day of July, A. D. 1898, he presented, offered, and tendered to the American Express Company for shipment by it as a common carrier, in behalf of A. Krolik & Co., a certain box or package addressed to the Huron Grindstone Co., at Port Austin, Mich., and that the said express company refused to receive, accept, ship, and transport the said box or package unless a revenue stamp of the value of one cent was paid or provided by said A. Krolik & Co. therefor.

HERMAN KROLIK.

Subscribed and sworn to before me this first day of August, A. D. 1898.

C. J. MORROW,
Notary Public, Wayne County, Michigan.

14 STATE OF MICHIGAN, } ss:
County of Wayne, }

James W. Fales, being duly sworn, deposes and says that on the 2nd day of July, A. D. 1898, he presented, offered, and tendered to the American Express Company for shipment by it as a common carrier, in behalf of J. W. Fales & Co., a certain box or package addressed to E. S. Clark, Greenville, M., and that the said express company refused to receive, accept, ship, and transport the said box or package unless a revenue stamp of the value of one cent was paid or provided by said J. W. Fales & Co. therefor.

JAMES W. FALES.

Subscribed and sworn to before me this first day of August, A. D. 1898.

F. M. ROBBINS,
Notary Public, Wayne County, Michigan.

15 STATE OF MICHIGAN, } ss:
County of Wayne, }

Joseph J. Crowley, being duly sworn, deposes and says that on the seventh day of July, A. D. 1898, he presented, offered, and tendered to the American Express Company for shipment by it as a common carrier, in behalf of Burnham, Stoepel & Co., a certain box or package addressed to D. & A. Cochrane, at Almont, Mich., and that the said express company refused to receive, accept, ship, and transport the said box or package unless a revenue stamp of the value of one cent. was paid or provided by said Burnham, Stoepel & Co. therefor.

JOSEPH J. CROWLEY.

Subscribed and sworn to before me this first day of August, A. D. 1898.

GEORGE A. CORWIN,
Notary Public, Wayne County, Michigan.

16 STATE OF MICHIGAN, } ss:
County of Wayne, }

Floyd G. Beach, being duly sworn, deposes and says that on the 2nd day of August, A. D. 1898, he presented, offered, and tendered to the American Express Company for shipment by it as a common carrier, in behalf of the American Harrow Co., a certain box or package addressed to C. E. Rick, at Indianapolis, Ind., and that the said express company refused to receive, accept, ship, and transport the said box or package unless a revenue stamp of the value of one cent was paid or provided by said American Harrow Co. therefor.

FLOYD G. BEACH.

Subscribed and sworn to before me this 2nd day of August, A. D. 1898.

C. M. MATTHEWS,
Notary Public, Wayne County, Michigan.

17 B.

STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne.

FRED A. MAYNARD, Attorney General of the State of Michigan, at the Relation of George F. Moore, Ransom Gillis, Charles Buncher, Frank S. Munger, Abram P. Sherrill, James S. Meredith, Henry A. Krolik, Herman Krolik, William H. Strong, James L. Lee, Hal W. Glover, George R. Treble, James W. Fales, William J. Fales, James K. Burnham, Albert H. Munger, Frederick C. Stoepel, Joseph J. Crowley, James Wilson, and The American Harrow Company, a Body Corporate, Relators,

vs.

THE AMERICAN EXPRESS COMPANY, a Body Corporate, and Charles F. Reed, Respondents.

On reading and filing the petition of Fred A. Maynard, attorney general of the State of Michigan, at the relation of George F. Moore and others, relators, and the affidavits annexed thereto, and on motion of Warner, Codd & Warner, of counsel for said relators—

It is ordered that the American Express Company, a body corporate, and Charles F. Reed, local agent thereof, do show cause before this court on Monday, the 8th day of August, A. D. 1898, at nine o'clock in the forenoon of that day, why a peremptory mandamus should not be issued out of said court to compel them, the said American Express Company and said Charles F. Reed, the local agent thereof, to receive and accept for transportation and delivery any and all goods, wares, and merchandise offered or tendered to said express company, whether in boxes, bales, packages, or bundles or not so enclosed or included, as a common carrier from point to point upon its lines and to issue to shippers or consignors or their agents or person from whom any goods shall be delivered, as aforesaid, for transportation a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment re-

18 ceived for carriage and transportation, with a revenue stamp of the value of one cent duly attached thereto and cancelled, as provided by an act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898, and without requiring the payment of said stamp tax by such shipper, consignor, or his agent or other person from whom any goods are so delivered for transportation.

And it is further ordered that a copy of this order, together with a copy of the petition and affidavits upon which the same is founded, be served upon the said American Express Company four days before the time hereinabove limited for showing cause by delivering the same to said Charles F. Reed, the local agent thereof.

GEORGE S. HOSMER,
Circuit Judge.

19 C.

In the Circuit Court for the County of Wayne.

FRED A. MAYNARD, Attorney General, etc., on the Relation of George F. Moore, Ransom Gillis, Charles Buncher, Frank S. Munger, Abram P. Sherrill, and James S. Meredith, as Survivors of Themselves and James L. Edson, Deceased, Composing the Firm of Edson, Moore & Co., *et al.*

vs.

THE AMERICAN EXPRESS COMPANY.

The answer of The American Express Company, respondent, to the petition of the attorney general of the State of Michigan in the above-entitled cause and the order of this court commanding it to show cause on the eighth day of August instant why the prayer of said petition should not be granted respectfully shows:

1. That the allegations of fact in paragraphs 1, 2, 3, and 4 are true as stated, except that part of paragraph 4 which alleges that "the statement of respondent's business, as shown by its report filed with the State treasurer January 29th, 1897, represents the situation and condition at the present time," which respondent denies.

2. That the allegations in paragraphs 5, 6, 7, 8, and nine respondent admits to be true.

3. That as to paragraph 10 respondent does not admit its desire to avoid paying the stamp tax, so called, but submits that under the terms of said act of Congress, properly construed, it is not made respondent's duty to pay said tax, only when some party who would be a shipper mutually agrees with respondent to enter into the relation of shipper and carrier and said party has tendered for shipment some article to be carried by defendant, which it has accepted for that purpose, then, and only then, is respondent liable
20 under said act to provide and attach said stamp; that by requiring in the manner it does, as hereinafter stated, every person who seeks its service as carrier to bear the burden of said tax respondent does not in any way violate nor has it in any way violated its duty as common carrier.

4. That in paragraph 6 said petitioner admits and alleges and it is undoubtedly true "that it is the duty of respondent to so receive and accept and transmit said packages when duly offered or tendered to it for that purpose and the charges therefor paid or tendered," and respondent shows that in the cases of pretended violation of its duties specified and set forth in paragraph 10 of said petition and in the cases of such violation generally referred to in paragraph 11 of said petition it is not pretended nor alleged that in any case were "the charges therefor paid or tendered," which should have been the case to have made it the duty of respondent to accept any or all of said packages as claimed.

5. That said petition in paragraph 12 states that this respondent "has refused to discharge its duty as common carrier," and "has to

a material degree suspended the exercise of its function," and "has refused to accept and transport a great part of the goods, wares, and merchandise duly offered and tendered to it except upon the consent of the shipper to pay the said stamp tax, whereby great loss and damage has accrued to the people of the State," and "the trade and commerce is greatly injured by the refusal and neglect of said respondent company to perform its duties of carrier unless the stamp tax, so called, is paid by shipper and consignor so tendering such goods to said company for transportation;" that respondent submits that such acts and refusals on its part, as so alleged, do not make or present a case or cases susceptible of being rectified, reformed, or punished at the instigation of the attorney general or any other person by use of the writ of mandamus, nor do such acts and refusals make or constitute any case within the jurisdiction of this court.

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6. This respondent further shows:

That it is the policy of all taxation laws under this Government that such burdens imposed thereby shall be as generally and equitably distributed as is possible, in order that said tax burden may be cast upon the many as a small burden rather than it should be a larger one cast upon the few.

That in the act Congress seems carefully to have refrained from providing, as between shipper and carrier, which shall bear the burden of the tax, thereby evidently intending to leave it a matter of adjustment by the parties, with the stringent condition, however, that if their necessities require them to enter into the business relation of shipper and carrier, as a condition precedent to their acting as such, the tax must be paid.

7. That respondent, regularly organized and existing under and by virtue of the laws of New York and acting under regularly issued license of this State, by its organization and compliance with the laws of this State, as admitted in paragraph 5 of said petition to have been done, became vested with the right to exist in a corporate capacity, and to regulate the carrying on of its business by reasonable rules and regulations, and to fix and insist upon the payment of such rates of transportation as it deems best, provided the same are not unreasonable in amount nor in manner of payment.

8. That the enactment of the stamp act referred to being an important change in the then condition of things, it became necessary for respondent to change and regulate its method of transacting its business and to re-establish its rates of transportation, so that it might meet that change in a way to prevent its resources from being so depleted as to weaken its financial condition.

22

Respondent therefore decided to raise and did raise its rates of transportation to an amount reasonable and just and only necessary to meet the change of conditions made by said act and save itself from great loss of revenue and profits as compared with its earnings before the passage of said act.

And respondent submits and asserts that it had the full and per-

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fect right to make such change in its method of transacting its business and in its former rates for transportation.

9. That in many cases it has been customary, though not obligatory upon respondent, for it to accommodate shippers by carrying their packages and collecting the transportation charges from the consignee at the point of delivery, a privilege of great value to shippers and of great convenience to them and one wholly within the discretion of respondent to stop or deny at any time.

That under its right to regulate its manner of doing business and regulating its rates and with a view, as far as possible under the circumstances, of accommodating the public so far as paying said increase of rates, respondent has accorded to responsible shippers the right to pay such increase (either using a stamp or money for the purpose) upon delivery of the goods and the privilege of paying the balance of the rate of transportation at the point of delivery to the consignee.

10. Respondent admits that the regulation of its business affairs and change in its rate of transportation, as above stated, in
23 effect throws the burden of the said tax upon the shipper by force of circumstances, and that such effect is in accordance with the principle of taxation before referred to, that the burden should be distributed equitably among the many rather than be cast upon the few; that should respondent be compelled to pay said tax, of which the expense thereof would amount to many thousands of dollars, without its right to guard against the effect of such expenditure in the manner adopted by it in raising its rate of transportation as it has done, its financial condition would be greatly weakened.

Therefore respondent submits that it has not been guilty of any violation of its duty as common carrier; that the effect of so doing throws the burden of tax upon the shipper, does not in any way lessen or limit or interfere with the respondent's right to manage its business and regulate its rates of charges, and that the changes made in that regard are reasonable and proper, and that the petition herein does not make or state a case that will warrant this court in granting the prayer thereof.

Wherefore respondent prays that the prayer of said petition be denied and the petition dismissed.

AMERICAN EXPRESS CO.,
By W. G. SMITH,
Supt. Mich. Div., Respondent.

WISNER & HARVEY,
Attorneys for Respondent.
H. C. WISNER, *Counsel.*

24 D.

In the name of the people of the State of Michigan:

To the American Express Company, a joint stock association, and Charles F. Reed, local agent thereof, and to its and his officers, agents, and servants:

Whereas it has been made to appear to the court that the said American Express Company is a common carrier, transacting the express business, so called, in the State of Michigan, and engaged in the business of receiving, carrying, forwarding, and delivering goods, wares, and merchandise by express for hire, on behalf of all persons who may see fit to require its services, from point to point throughout the various States and Territories of the United States, and that said American Express Company has procured a certificate of authority or license from the State treasurer of the State of Michigan under and in pursuance of chapter 103 of Howell's Annotated Statutes of the State of Michigan, and thereby obtained permission to do business freely in any part of said State, and that the business of the said American Express Company is of a public character, and that said company is in the exercise of a public function in which the public have a substantial interest, and the abuse or misuse of which is of a substantial nature, and that the said American Express Company uniformly refuses to accept goods for transportation unless the shipper thereof attaches the stamp of one cent provided by the act of Congress of the United States entitled "An act to provide ways and means to meet war expenditures and for other purposes," or furnishes the moneys and means for that purpose to said company, and that said express company thereby violates its duty as a common carrier to receive, accept, transport, and deliver such goods, wares, and merchandise so offered and tendered to it for that purpose, and that such acts are in violation of the duties and obligations of said company to the people

25 of the State of Michigan:

We therefore, being willing that due and speedy justice should be done in the premises in this behalf, as is reasonable, do command and firmly enjoin you, the said American Express Company, and you, the said Charles F. Reed, its local agent, and the officers, agents, and servants of said express company, so long as you, the said American Express Company, shall continue to do business in the State of Michigan, that immediately after the receipt of this our writ you do receive and accept for transportation and delivery any and all goods, wares, and merchandise offered or tendered to you, the said express company, whether in boxes, bales, packages, or bundles, or not so enclosed or included, as a carrier from point to point upon the lines of said company, upon the usual fees therefor being paid or tendered by the shipper or consignor, his agent or servant; and to issue to the said shippers or consignors, or their agents, or the persons from whom any goods shall be delivered, as aforesaid, for transportation, a bill of lading, manifest, or other evi-

dence of receipt for forwarding, for each shipment received for carriage or transportation, with a revenue stamp of the value of one cent duly attached thereto and cancelled, as provided by an act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, A. D. 1898, and without requiring a stamp of the value of one cent or the equivalent thereof provided by said act of Congress to be furnished by said shipper or consignor, or his agent, servant, or other person or persons from whom any goods are received for transportation, or the payment provided by said shipper, consignor, or his agent, or other person or persons.

And how you shall have executed this our writ make known to our said circuit court for the county of Wayne, at the city of Detroit, on the first day of November, 1898.

26 Witness the Hon. Robert E. Frazer, one of the circuit judges of the third judicial circuit, at the city of Detroit, this 22nd day of September, A. D. 1898.

[SEAL.] HENRY M. REYNOLDS, *Clerk*,
By ROBERT McBRIDE, *Dep. Clerk*.

WARNER, CODD & WARNER, *Attorneys*.

27 Petition endorsed: Filed September 27, 1898. Chas. C. Hopkins, clerk supreme court.

Further endorsement: Let the writ issue. C. B. Grant, chief justice. Sept. 27, 1898.

28 In the name of the people of the State of Michigan, to the judges of the circuit court for the county of Wayne:

[Seal Supreme Court.]

We, being willing for certain causes that it should be certified to our supreme court what proceedings have been had before you and what has been done by you in the matter of granting a peremptory writ of mandamus in a cause pending in said circuit court, wherein Fred A. Maynard, attorney general, at the relation of George F. Moore, Ransom Gillis, Charles Buncher, and others are relators and The American Express Company and Charles F. Reed are respondents, do therefore command you that you distinctly and openly certify the records and proceedings in said matter to the said supreme court, before the justices thereof, that they may have them at the supreme court room, in the capitol, in the city of Lansing, on the eighth day of October, A. D. 1898, that said court may cause to be done thereupon what of right ought to be done; and have you then and there this writ.

Witness the Honorable Claudius B. Grant, chief justice of our supreme court, at Lansing, this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. C. HOPKINS,
Clerk Supreme Court.

I hereby certify that the foregoing writ was duly allowed by Honorable Claudius B. Grant, chief justice of the supreme court of Michigan, on the twenty-seventh day of September, 1898.

CHAS. C. HOPKINS, *Clerk.*

[Endorsed:] No. 17187. Supreme court of the State of Michigan. The Attorney General *ex rel.* George F. Moore *et al.*, relators, *vs.* The American Express Company *et al.*, respondents and appellants. Writ of certiorari. Filed October 8, 1898. Chas. C. Hopkins, clerk supreme court. Wisner & Harvey, att'ys for respondents.

To the supreme court of the State of Michigan:

The execution of the within writ appears by the transcript of record hereto annexed.

September 30, 1898.

HENRY M. REYNOLDS,
Clerk Wayne County,
By WALTER J. OLDFIELD, *Deputy.*

29 At a session of the supreme court of the State of Michigan held at the supreme court room, in the capitol, in the city of Lansing, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Claudius B. Grant, chief justice; Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, Charles D. Long, associate justices.

THE ATTORNEY GENERAL *ex Rel.* GEORGE F. MOORE *et al.*, Relators,
vs.
THE AMERICAN EXPRESS COMPANY, Respondent and Appellant. } # 17187.

This matter, coming on to be heard, is argued by Mr. Carl E. Warner, for relators, and by Mr. Henry C. Wisner, for respondent, and submitted.

30 Supreme Court of Michigan.

THE ATTORNEY GENERAL *ex Rel.* GEORGE F. Moore *et al.*
vs.
THE AMERICAN EXPRESS COMPANY. } Filed December 6, 1898.

The attorney general, on the relation of various merchants in the city of Detroit, filed a petition in the Wayne circuit court for a mandamus to compel the respondent, its officers, agents, and servants, to receive, accept, transmit, and deliver any and all goods, wares, and merchandise duly offered and tendered to it in boxes, packages, etc., for transportation, when the fees and charges for such goods shall be paid or tendered, and to issue to the shippers or consignors throughout this State a bill of lading or evidence of receipt for each

shipment with the stamp duly attached thereto and cancelled by it, as provided by the act of Congress of June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," without requiring such consignors or shippers to pay the said stamp or value thereof.

The court below issued an order to show cause, and a return having been made to such order by the respondent, the court granted the writ as prayed. The case comes into this court by certiorari.

The respondent is a joint stock association organized and existing under the laws of the State of New York and having its principal business office in the city of New York. It is a common carrier transacting express business, so called, and engaged in the business of receiving, carrying, forwarding, and delivering goods, wares, and merchandise. It is doing business in this State in pursuance
31 of a license, issued by the State treasurer under and by virtue of chapter 103, How. Stat.

The petition shows that the respondent, upon delivery of packages to it for transportation as a common carrier, refused to accept goods for transportation unless the shipper or consignor would pay for the stamp provided by said act of Congress; that this refusal was general throughout the State by all its officers and agents, and that it has 498 agencies within this State.

The respondent, in its answer filed in the court below, admits many of the allegations in the petition; but it alleges that in the act Congress has refrained from providing as between shipper and carrier which shall bear the burden of the tax, thereby intending to leave it a matter of adjustment between the parties, conditioned, however, that the tax must be paid; that the respondent, being organized and having the right under the statute of this State to carry on an express business, becomes vested with the right to regulate the carrying on of its business by reasonable rules and regulations and to fix and insist upon the payment of such rates of transportation as it deems best, provided the same are not unreasonable in amount nor in manner of payment; that the enactment of the stamp act referred to being an important change in the then condition of things, it becomes necessary for respondent to change and regulate its method of transacting business and to re-establish its rates of transportation so that it may meet the change in a way to prevent its resources from being so depleted as to weaken its financial condition; that respondent therefore decided to raise and has raised its rates of transportation to an amount reasonable and just and only necessary to meet the change of conditions made by the act and save itself from great loss of revenue and profits as compared
32 with its earnings before the passage of the act, and which it has the lawful right to do; that under its right to regulate its manner of doing business and of accommodating the public, so far as paying said increase of rates, respondent has accorded responsible shippers the right to pay such increase (either using a stamp or money for the purpose) upon delivery of the goods and the privilege of paying the balance of the rate of transportation at the point of delivery to the consignee.

It is admitted that this change in the manner of doing business in effect throws the burden of the tax upon the shipper, but it is claimed that such effect is in accordance with the principles of taxation; that the burden shall be distributed equitably among the many rather than to be cast upon the few, and it is claimed that should the respondent be compelled to pay the tax, which would amount to many thousands of dollars, without the right to guard against the effect of such expenditure in the manner adopted by it in raising its rates of transportation, as has been done, its financial condition would be greatly weakened.

In the answer it is also alleged that in any case of pretended violation of its duties, as set forth in the petition, it was not pretended or alleged that the charges were paid or tendered, but it appears from the opinion of the court below that this point was abandoned on the argument there, and the case was left to the court below to decide, the same as if the charges had been tendered. That question will not, therefore, be discussed here, but it will be taken as settled that the charges were so tendered.

The act of Congress provided:

"SEC. 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected and paid for, and in respect of the several bonds, debentures or certificates
33 of stock and of indebtedness, and other documents, instruments, matters and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment or paper upon which such instruments, matters or things, or any of them, shall be written or printed, by any person or persons, or party, who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

"SEC. 7. That if any person or persons shall make, sign or issue, or cause to be made, signed or issued, any instrument, document or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall pay a fine of not more than one hundred dollars at the discretion of the court, and such instrument, document or paper, as aforesaid, shall not be competent evidence in any court."

Schedule A of said act, among other things, provides as follows:

"Express and freight.—It shall be the duty of every railroad or steamboat company, carrier, express company or corporation, or person, whose occupation is to act as such, to issue to the shipper or consignor, or his agent or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles,

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or not so enclosed or included; and there shall be duly at-
34 tached and cancelled, as in this act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent; provided, that but one bill of lading shall be required on bundles or packages of newspapers when enclosed in one general bundle at the time of shipment. Any failure to issue such bill of lading, manifest or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company or corporation or person, to a penalty of fifty dollars for each offense, and no such bill of lading, manifest or other memorandum shall be used in evidence unless it shall be duly stamped as aforesaid."

The relator contends that the duty to pay this tax is cast upon the respondent by the terms of the act, and that when the proper charges were tendered for the transportation it became the duty of the respondent to undertake the carriage, and that respondent has no right under the guise or pretense of raising its rates to cast this burden upon the public.

1. It is contended by counsel for respondent that the question is one over which the Federal courts have exclusive jurisdiction.

We cannot agree with counsel in this contention. This is not an action for the recovery of the penalty which the statute imposes for failure to issue the bill of lading, but a proceeding for an order to compel the respondent, a common carrier, to accept and carry the goods tendered it for shipment when the regular charges are paid or tendered. The respondent is a common carrier, and as such it is its duty to receive for carriage and to carry the goods of any person tendered to it for transmission, provided they are such as it holds itself out as willing to carry and the party tendering them offers to pay its proper charges. This duty is imposed by law. Am. & Eng. Enc. Law, vol. 5, 2nd ed., 158, 159.

35 The respondent is permitted to do business in this State, though not incorporated under the laws of the State, but it is subject to all the duties and obligations which the law imposes upon common carriers, and for a refusal to carry goods when tendered and charges paid the State courts may be appealed to for redress. This matter is entirely between the shippers and the company. This view is held by the Attorney General of the United States in a recent opinion, in which he says: "In all controversies arising between the shippers and express companies as to which one shall be required to bear the expense of the stamp the General Government has no direct concern under the war-revenue law."

The General Government, it appears, refuses to proceed against express companies for a violation of the act unless it be made to appear that the company has accepted for transportation such goods for shipment and has refused to attach the stamp thereon—that is, the General Government may and will prosecute for the penalty fixed by the act when the goods are received and shipped without the company's affixing the revenue stamp to the receipt or bill of lading, but it will not interfere between the public and the company for refusal to carry. The Commissioner of Internal Revenue

on August 1, 1898, decided that the aggrieved parties—that is, the parties offering goods for shipment—when the company refuses to carry without payment of the stamp, must depend for redress upon the common or the statute law of the State defining the obligations of common carriers.

2. Unless, therefore, the shipper should pay the tax, the company is bound to carry upon the payment or tender of the regular charges. The company is vested with the exercise of public functions under the permissive power of the State, and when it refuses to discharge the duties imposed by law, mandamus is the
36 proper remedy to compel the discharge of that duty. The American courts have taken such occupations under their control, and, regarding them as public agencies, have enforced the common law or the statutory law against them, and have not hesitated to grant the writ of mandamus against any party who, having assumed public duties, refuses to discharge them. Haugen *v.* Albinia A. Co., 28 Pac. Rep. (Oregon), 244; Olmsted *v.* Proprietors of Morris Aqueduct, 47 N. J. L., 311.

But counsel contends further that the power given to the circuit courts to issue mandamus rests upon rule 48 of this court, which provides: "Circuit courts shall have jurisdiction within their respective counties in all mandamus proceedings involving the action of any officer or board of any county, township, city, or school district, or the common council of any city or village, and the action of any private corporation or officer or board thereof," and that this rule not having included joint-stock associations, the circuit courts are not vested with power to issue the writ.

Corporations and associations are convertible and often used as synonymous terms. There is no reason for any distinction or discrimination between corporations and joint-stock associations in applying this rule. It is the intent of the rule to place all mandamus proceedings of this character primarily in the circuit courts. In reference to the assessment and collection of specific taxes, the legislature of this State has recognized the terms as convertible.

Sec. 1255, How. Stat., provides: "The term corporation as used in this act shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partners."

37 In Maltz *v.* American Express Co., 1 Flippin, U. S. Court, 611, it was held that, whether a corporation or not, a joint-stock association is a distinct legal entity, and that so long as this fact exists and it possesses the attributes of perpetual succession and the capacity of suing and being sued, it is a judicial person and must be regarded as a citizen of the State which creates it; and it is wholly immaterial whether it be termed an association, joint-stock association, or guild.

3. The main question in the case relates to the construction to be placed upon the act in question.

By the act every express company is compelled to issue to every shipper or consignor, etc., a bill of lading for each shipment received for carriage, to which bill of lading and duplicate thereof there

shall be attached and cancelled a stamp of the value of one cent. The law therefore imposes upon the carrier the obligation to issue the receipt. With this the shipper has nothing to do. He delivers the package to the company, pays or tenders the usual charges. This ends the shipper's duty, and the law then compels the carrier to issue the receipt or bill of lading.* This bill must be stamped and the stamp cancelled. It is evident that it is as much the duty of the company to place the stamp upon the receipt and cancel it as it is to issue the receipt. This duty is made more apparent by the fact that the act further provides that failure to issue the receipt makes the carrier so failing amenable to a heavy penalty.

But it is contended by counsel in a brief filed with this court that the penalty was directed and intended by Congress to be directed to the failure to issue the receipt and nothing more, leaving the question of the stamping of the same to be settled by the parties.

It seems to us that what is meant by this clause is that the receipt must be such as is provided—that is, a receipt
38 bearing the proper stamp—and that the penalty is provided for such a failure as this. It is and always has been the custom of express companies to issue receipts for goods delivered for shipment. The only interest the Government has or can have is the affixing and cancellation of the stamp to aid it in its war revenues. We are therefore led to the conclusion that the duty to issue the receipt and the penalty affixed for the failure to do so implies that it is to be a receipt which would bring the Government the revenue provided; therefore the act makes it the duty of the company to affix the stamp.

4. It is contended, however, that the company has the right to make new regulations and establish new rates to meet this burden. It is conceded that the effect of this is to throw the burden upon the shipper.

It is apparent upon the face of this proceeding that the very purpose of this change in the regulations and the increase of rates is to avoid the payment of the tax, and thus cast upon the shippers the burden which the act of Congress puts upon the company. This is but an evasion and a subterfuge to avoid the terms of the act.

The pretence that by raising the charges on each package just one cent, without reference to the distance to be carried, the weight or bulk of the package, and the former fixed charges, is a regulation of charges can hardly be treated seriously. If the charges established were regarded as too small, it would seem that the action would have been to make the additions in some manner to correspond to the length of carriage, weight, etc., but to add one cent to every charge for carriage bears upon its face evidence of the attempt to evade the act. Where the charge established was twenty-five cents, it is now twenty-six cents; where it was fifty cents, it
39 is now fifty-one cents; where one dollar, it is now one dollar and one cent, and so on, adding just one cent to each charge. It cannot be that this was done because the charge was too low for each carriage, however long the distance or however weighty the article. The statement of this claim is its own refutation.

We are aware that Judge Lacom-e, of the U. S. circuit court of New York, has held the other way upon this question in the case of The Merchants' Association of New York *v.* Adams Express Company, as also the U. S. circuit courts of North Carolina and California, but we are unable to agree with those cases. Judge Tuley, in the superior court of Cook county, Illinois, has, however, held in accordance with our views here expressed. It is said by him that "it is not in fact a revision or increase of rates, but an arbitrary attempt of the company to make the shippers pay a tax which the law requires the company to pay. The court must regard the substance of the contention and not the pretense."

5. It is further contended that the order of the court below is too broad; that the writ should run against the company only so far as to affect the parties to this record.

The petition is filed by the attorney general of the State, in which it is stated that these case- constitute but few of the many of like character, and is presented for the purpose of representing the uniform course of practice of the respondent company. This is not denied by the answer, but, on the contrary, the claim is made therein that the regulation of its business affairs and change in its rates of transportation throw the burden of the tax upon the shipper by force of circumstances. It is thus apparent that the attorney general's petition, taken with the answer of the respondent, is sufficient to show that the respondent is attempting to enforce this rule throughout the State in its dealings with all its customers, and the case involves the question whether the order should be broad
40 enough to reach the rights of all classes who are shippers within the State. We think the order should not be modified as claimed.

The judgment of the court below must be affirmed.

CHAS. D. LONG.
J. B. MOORE.
R. M. MONTGOMERY.
C. B. GRANT.
FRANK A. HOOKER.

41 At a session of the supreme court of the State of Michigan held at the supreme court room, in the capitol, in the city of Lansing, on the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Present: The Honorable Claudius B. Grant, chief justice; Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, Charles D. Long, associate justices.

THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN on the Relation of George F. Moore *et al.*, Relators,
vs.
THE AMERICAN EXPRESS COMPANY and CHARLES F. Reed, Respondents and Appellants. } # 17187.

The record and proceedings in this cause having been removed

to this court by writ of certiorari issued to the circuit court for the county of Wayne, and the same and the matters in error assigned having been seen and inspected and duly considered by the court and no error appearing therein, therefore it is ordered and adjudged that the order of said circuit court for the county of Wayne granting a peremptory writ of mandamus herein be, and the same is hereby, in all things affirmed; and it is further ordered and adjudged that the relators recover of and from the respondents their costs, to be taxed, and have execution therefor.

42 *Bond.*

Know all men by these presents that we, the American Express Company, a joint stock association of New York, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto Fred A. Maynard, attorney general of the State of Michigan, *ex rel.* George F. Moore *et al.*, in the full and just sum of two thousand five hundred dollars, to be paid to the said Fred A. Maynard, attorney general of the State of Michigan, *ex rel.* George F. Moore *et al.*, his certain attorney, executors, administrators, successor, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the supreme court of the State of Michigan, in a suit depending in said court between Fred A. Maynard, attorney general, on the relation of George F. Moore *et al.*, and The American Express Company, a judgment was rendered against the said American Express Company, and the said American Express Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Fred A. Maynard, attorney general of the State of Michigan, *ex rel.* George F. Moore *et al.*, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said American Express Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

43 AMERICAN EXPRESS CO.,
By G. W. MARKS, *Agent.* [SEAL.]
AMERICAN SURETY COMPANY
OF NEW YORK,
By JOHN F. RODGERS,
Resident Vice-President.
Attest: LEONARD DAMMANN,
Resident Ass't Secretary.

Sealed and delivered in presence of—
E. C. OWEN,
As to express company.
F. C. HARVEY,
As to both signatures.
M. S. CARPINTER,
As to surety company.

Approved by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

Jan. 30, 1899.

Endorsed: Filed Jan. 6, 1899. Chas. C. Hopkins, clerk supreme court.

44 *Petition for Allowance of Writ of Error.*

To the Honorable John M. Harlan, associate justice of the Supreme Court of the United States:

The petition of the American Express Company, a joint stock association organized and existing under the laws of the State of New York, respectfully shows:

1. That it is the respondent in a cause commenced in the circuit court for the county of Wayne and State of Michigan, wherein Fred A. Maynard, attorney general of the State of Michigan, on the relation of George F. Moore *et al.*, is the relator; which said cause proceeded to judgment in said circuit court in favor of said relator, a copy of which said judgment and the writ of mandamus issued in pursuance of said judgment is hereto attached and made a part hereof, marked Exhibit "A."

2. That thereupon the said petitioner sued out a writ of certiorari to the supreme court of Michigan, which is the final court of appeal in said State, and the said judgment was thereupon reviewed by said supreme court.

3. That the right claimed by said relator and set forth in relator's petition is substantially as follows: That the American Express Company, a common carrier, violated its duty as such by refusing to receive for carriage goods, wares, and merchandise offered and tendered to it by shippers unless the shipper attached to the bill of lading, manifest, or other evidence of receipt and forwarding the stamp required by the provisions of an act of Congress of June 13th, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," and that said respondent sought to evade the payment of the stamp tax, so called, by requiring the shipper to pay said tax.

That the answer of said respondent denied that under said
45 act of Congress it was the duty of respondent to attach said stamps to said bills of lading, manifests, or evidences of receipt and forwarding, and that it had the right to compel the ship-

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per to pay said tax before the acceptance by respondent of the goods and wares to be carried and before the issuance by it of said receipt, manifest, or evidence of receipt and forwarding.

4. That after the hearing on said writ of certiorari in said supreme court on December 6th, 1898, a judgment was entered in said supreme court affirming the judgment of the circuit court for the county of Wayne, the decision of said court being against the right set up and claimed by respondent, the said supreme court holding that the act of Congress of June 13th, 1898, made it the duty of the respondent to affix and bear the expense of said revenue stamp provided for by said act.

5. That on December 28th, 1898, application was made by petitioner to the chief justice of the supreme court of Michigan for the allowance of a writ of error to the Supreme Court of the United States in accordance with the provisions of the statutes of the United States; that on the 29th day of December, 1898, the said chief justice refused to allow the issuance of said writ of error, giving as a reason therefor that there was no Federal question involved in the proceeding.

Wherefore your petitioner prays that you endorse hereon or on the draft of a writ of error herewith presented an order allowing the issuing of a writ of error to remove the record of said cause to the Supreme Court of the United States for review, in accordance with the provisions of section 709 of the Revised Statutes of the United States of 1878, and that a citation may issue under the seal of the said court directed to the said Fred A. Maynard, attorney general of the State of Michigan, as required by the rules and practice of said court.

And your petitioner will ever pray.

AMERICAN EXPRESS CO,
By CHARLES F. REED, *Gen'l Ag't.*

46 STATE OF MICHIGAN, } ss:
County of Wayne, }

Charles F. Reed, being duly sworn, deposes and says that he is the general agent of the American Express Company, and signed the foregoing petition in its behalf; that he has read the same and knows the contents thereof, and the same is true in substance and in fact.

CHARLES F. REED.

Subscribed and sworn to before me December 30th, 1898.

[Seal of Fred C. Harvey, Notary Public, Wayne Co., Mich.]

F. C. HARVEY,
Notary Public, Wayne County, Michigan.

Writ of error allowed. Supersedeas upon execution of bond in penalty of two thousand five hundred dollars. This January 2d, 1899.

JOHN M. HARLAN,
Asso. Justice Sup. Ct. U. S.

47 EXHIBIT A.

At a session of the circuit court for the county of Wayne and State of Michigan, held at circuit court room No. 4 of said court, in the city of Detroit, on the 21st day of September, A. D. 1898.

Present: Hon. Robert E. Frazer, circuit judge.

FRED A. MAYNARD, Attorney General, *ex Rel.* GEORGE F. Moore *et al.*
vs.
THE AMERICAN EXPRESS COMPANY and CHARLES F. Reed. } No. 38638.

The above-entitled cause having heretofore, on the 13th day of August, 1898, been submitted for hearing, it is now by the court ordered that a writ of mandamus do issue in accordance with the prayer of said petition; and it is further ordered that a stay of all proceedings be had for the period of ten days from this date.

ROBERT E. FRAZER,
Circuit Judge.

48 EXHIBIT A.

In the name of the people of the State of Michigan:

To the American Express Company, a joint stock association, and Charles F. Reed, local agent thereof, and to its and his officers, agents, and servants:

Whereas it has been made to appear to the court that the said American Express Company is a common carrier, transacting the express business, so called, in the State of Michigan, and engaged in the business of receiving, carrying, forwarding, and delivering goods, wares, and merchandise by express for hire on behalf of all persons who may see fit to require its services from point to point throughout the various States and Territories of the United States, and that said American Express Company has procured a certificate of authority or license from the State treasurer of the State of Michigan under and in pursuance of chapter 103 of Howell's Annotated Statutes of the State of Michigan, and thereby obtained permission to do business freely in any part of said State, and that the business of the said American Express Company is of a public character, and that said company is in the exercise of a public function in which the public have a substantial interest, and the abuse or misuse of which is of a substantial nature, and that the said American Express Company uniformly refuses to accept goods for transportation unless the shipper thereof attaches the stamp of one cent provided by the act of Congress of the United States entitled "An act to provide ways and means to meet war expenditures and for other purposes," or furnishes the moneys and means for that purpose to said company, and that said express company thereby violates its duty as common carrier to receive, accept, transport, and deliver such goods, wares,

and merchandise so offered and tendered to it for that purpose, and that such acts are in violation of the duties and obligations of said company to the people of the State of Michigan, we, therefore, being willing that due and speedy justice should be done in the premises in this behalf as is reasonable, do command and firmly enjoin you, the said American Express Company, and you, the said Charles F. Reed, its local agent, and the officers, agents,
49 and servants of said express company, so long as you, the said express company, shall continue to do business in the State of Michigan; that immediately after the receipt of this our writ you do receive and accept for transportation and delivery any and all goods, wares, and merchandise offered or tendered to you, the said express company, whether in boxes, bales, packages, or bundles or not so enclosed or included, as a carrier from point to point upon the lines of said company, upon the usual fees therefor being paid or tendered by the shipper or consignors, his agent or servant, and to issue to the said shipper or consignors, or their agents, or the persons from whom any goods shall be delivered, as aforesaid, for transportation a bill of lading, manifest, or other evidence or receipt and forwarding for each shipment received for carriage or transportation, with a revenue stamp of the value of one cent duly attached thereto and cancelled, as provided by an act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13th, A. D. 1898, and without requiring a stamp of the value of one cent, or the equivalent thereof, provided by said act of Congress to be furnished by said shipper or consignor or his agent, servant, or other person or persons from whom any goods are received for transportation or the payment provided by said shipper, consignor, or his agent or other person or persons.

And how you shall have executed this our writ make known to our said circuit court for the county of Wayne, at the city of Detroit, on the 1st day of November, 1898.

Witness the Hon. Robert E. Frazer, one of the circuit judges of the third judicial circuit, at the city of Detroit, this 22nd day of September, A. D. 1898.

(S'g'd) HENRY M. REYNOLDS, *Clerk*,
[SEAL.] By ROB'T McBRIDE, *Dep. Clerk*.

WARNER, CODD & WARNER, *Attorneys*.

50 [Endorsed:] 17187. Supreme Court of the United States. Fred A. Maynard, attorney general, *ex rel.* George F. Moore *vs.* The American Express Company. Petition of American Express Company for writ of error to supreme court of Michigan. Filed Jan. 7, 1899. Chas. C. Hopkins, clerk supreme court of Michigan.

51 The Supreme Court of the United States.

THE AMERICAN EXPRESS COMPANY, Plaintiff in Error,
vs.
FRED A. MAYNARD, Attorney General of the State of Michigan, on the Relation of George F. Moore, Ransom Gillis, Charles Buncher, Frank S. Munger, Abram P. Sherrill, James S. Meredith, Henry A. Krolik, Herman Krolik, William H. Strong, James L. Lee, Hal W. Glover, George R. Treble, James W. Fales, William J. Fales, James K. Burnham, Albert H. Munger, Frederick C. Stoepel, Joseph J. Crowley, James Wilson, and The American Harrow Company, a Body Corporate, Defendant in Error.

Error to the Supreme Court of the State of Michigan.

Assignments of Errors.

And now comes the plaintiff in error in the case entitled above, by Henry C. Wisner and Fred C. Harvey, its attorneys, and alleges error in the proceedings had in the supreme court of the State of Michigan as follows:

1. The supreme court of the State of Michigan erred in deciding that the matter presented in this cause is not within the exclusive jurisdiction of the Federal courts.

2. The supreme court of the State of Michigan erred in deciding that under the act of Congress of June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," said plaintiff in error is absolutely bound to supply and affix the stamp required by said act without exacting the price of said stamp from its customers.

3. The supreme court of Michigan erred in deciding that under said act, as Congress had refrained from providing, as be-
52 tween shipper and carrier, which should bear the burden of said tax, it had thereby left it a matter of adjustment between the express company and its customer.

4. The supreme court of Michigan erred in deciding that a proper construction of said war revenue act requires express companies to pay for the stamps to be affixed to receipts they give and forbids said companies exacting the price of such stamps from their customers.

5. The supreme court of the State of Michigan erred in deciding that by the terms of said war revenue act plaintiff in error is prohibited from raising its rates of service — an amount just equal to that required to purchase the necessary stamps provided by such act and exacting the same from its customers before accepting the property tendered for transportation in the manner that said plaintiff in error has been doing under its new regulations and rates

made to meet the burden placed upon it by said act in cases where it supplied the stamp, as shown under the pleadings in this cause.

6. The supreme court of the State of Michigan erred in deciding that, as shown by the pleadings herein, the change in the regulations and the increase of rate so made by plaintiff in error is to avoid the payment of said tax and thus cast upon the shipper the burden which the act of Congress puts upon the company; that the same is but an arbitrary attempt of the plaintiff in error to make the shippers pay a tax which the law requires the plaintiff in error to pay, and that the same is therefore void.

And because of the errors aforesaid said plaintiff in error prays that the judgment of the supreme court of the State of Michigan may be reversed, set aside, and held for naught.

HENRY C. WISNER,
FRED C. HARVEY,
Detroit, Michigan, Attorneys for Plaintiff in Error.

[Endorsed:] 17187. Filed Feb. 15, 1899. Chas. C. Hopkins, clerk.

53 UNITED STATES OF AMERICA, *ss*:

To Fred A. Maynard, attorney general of the State of Michigan, on the relation of George F. Moore, Ransom Gillis, Charles Buncher, Frank S. Meredith, Henry A. Krolik, Herman Krolik, William H. Strong, James L. Lee, Hal W. Grover, George R. Treble, James W. Fales, William J. Fales, James K. Burnham, Albert H. Munger, Frederick C. Stoepel, Joseph J. Crowley, James Wilson, and the American Harrow Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Michigan, wherein The American Express Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

54 [Endorsed:] 17187. Filed Jan. 7, 1899. Chas. C. Hopkins, clerk.

I hereby accept service of a true copy of the within citation this 6th day of January, A. D. 1899.

HORACE M. OREN,
Attorney General of the State of Michigan.
FRED A. MAYNARD,
Ex-Attorney General.

55 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Michigan, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Michigan, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Fred A. Maynard, attorney general of the State of Michigan, on the relation of George F. Moore, Ransom Gillis, Charles Buncher, Frank S. Meredith, Henry A. Krolik, Herman Krolik, William H. Strong, James L. Lee, Hal W. Grover, George R. Treble, James W. Fales, William J. Fales, James K. Burnham, Albert H. Munger, Frederick C. Stoepel, Joseph J. Crowley, James Wilson, and The American Harrow Company, as relators, and The American Express Company, a body corporate, and Charles F. Reed, as respondents, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitu-

56 tion or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said American Express Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the third day of January, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] 17187. Filed Jan. 7, 1899. Chas. C. Hopkins, clerk.

57	The Attorney General *ex Rel.* George F. Moore, Ransom Gillis, and Others, Relators, *vs.* The American Express Company, Respondent and Appellant.	Warner, Codd & Warner. Certiorari to Wayne.	Wisner & Harvey.

Journal.	Date.	Proceedings.
	1898.	
	Sep. 27	Petition filed.
	" "	Writ allowed by Grant, C. J., and issued, returnable October 8, 1898.
	Oct. 8	Proof of service filed.
	" "	Return filed.
	" 17	Notice of hearing filed.
P. 123..	Nov. 15	Argued and submitted.
P. 146..	Dec. 6	Affirmed with costs.
	1899.	
	Jan. 7	Petition for writ, with allowance thereon, filed.
	" 7	Writ of error to Supreme Court U. S. received and filed.
	" 7	Citation, with acceptance of service, filed.
	" 7	Bond, duly approved, filed.
	Feb. 15	Assignment of errors, Supreme Court U. S., filed.
	Feb. 16	Return made to Supreme Court U. S.

58 Supreme Court of the State of Michigan.

FRED A. MAYNARD, Attorney General of the State of Michigan, on the Relation of George F. Moore *et al.*, Relator- and Defendant- in Error,

vs.

THE AMERICAN EXPRESS COMPANY, Respondent and Plaintiff in Error.

STATE OF MICHIGAN, *ss:*

In the Supreme Court.

I, Charles C. Hopkins, clerk of the supreme court of the *supreme court of the* State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court and filed in my office, as appears of record and on file in said cause; that I have compared the same with the original and it is a true transcript therefrom and of the whole

thereof; that attached thereto are the writ of error, with allowance endorsed thereon; the citation, with acknowledgment of service endorsed thereon; a copy of the bond to the adverse party filed, with the writ of error, and the assignment of errors in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this 16th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No., 17,308. Michigan supreme court. Term No., 723. The American Express Company, plaintiff in error, *vs.* Fred A. Maynard, attorney general of the State of Michigan, *ex rel.* George F. Moore *et al.* Filed February 21, 1899.